

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5437 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI ABDUL REHMAN ABDUL RAZAK VORA
VERSUS
DHOLKA BOROUGH MUNICIPALITY

Appearance:

None present for the Petitioner
MR KC SHAH for the Respondent

Coram: S.K. Keshote,J
Date of decision: 16/02/1998

C.A.V. JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the petitioner. Perused the Special Civil Application and heard the learned counsel for the respondent.

#. In this case, the respondent-Municipality has not filed reply to the Special Civil Application and as such the averments made in the Special Civil Application stand uncontroverted. The petitioner was appointed as a clerk at the Octroi Naka of the respondent-municipality vide order dated 4.7.79. The petitioner was continued on the post aforesaid satisfactorily till 1.5.86, when his services were terminated by the Administrator of respondent-Municipality. The order of termination of services of the petitioner has been placed on the record of this Special Civil Application at annexure 'A' and no reason, good, bad or indifferent has been given in the order to terminate the services of the petitioner.

#. This Special Civil Application has been filed by petitioner on 9th October 1986. On 10th March 1987, this writ petition has been admitted and interim relief in terms of para 9(B) has been granted. Para 9(B) of the Special Civil Application reads as under:

To issue interim, mandatory injunction directing
the respondent to reinstate the petitioner in
service during the pendency and final hearing of
this special civil application.

#. The learned counsel for the respondent admits that the aforesaid order has been complied with and the petitioner is continued in service of the respondent. The order of termination of services of the petitioner has been challenged by the petitioner on the grounds interalia, (i) he has completed more than 240 days service in the respondent-municipality and as such he is entitled to confirmation on regular basis and permanent basis, (ii) he has not been given notice of retrenchment as required under the Industrial Disputes Act, and (iii) his services have been terminated in violation of provisions of Section 25-F of the said Act, (iv) the respondent has retained juniors in service whereas the services of senior has been terminated. The petitioner made a reference to the facts in this respect as under:

One Mohamedbhai Umarbhai who was employed as a daily wager has been continued in service as he is the son of Councillor in the respondent-Municipality. Similarly, the respondent-Municipality has continued the

services of Gaffarbhai Mohamedbhai and Umeshbhai Manubhai Amin, who are also junior to the petitioner. After 1.1.86, two junior persons, namely Bharatkumar Kantilal Trivedi and Bhagubhai Gandabhai Purabia have been made permanent vide Resolution dated August 1986. Some new entrants, namely Bashirbhai Valibhai Radhanpuri and Jitendrakumar Jayantilal Trivedi, alongwith other juniors of petitioner, namely, Hamidmiya Dosumiya Kazi, Rameshkumar Girjashankar Joshi and Sartanbhai Ranchhodbhai Rabari, have been made permanent by the recently newly elected Board of the respondent-Municipality. Further, twenty more Muster clerks in the Octroi department including Abdul Razak G. Mansuri, Abbasmiya Bademiya Malek, Devendra Makwana etc. have been engaged. Lastly, grievance has been made that termination of services of the petitioner is contrary to the decision of Division Bench of this Court given in Special Civil Application No.4087 of 1984 and cognate matters, decided on 21st December 1984.

#. The learned counsel for the respondent contended that the petitioner was only a daily wager and as such, he has no right to hold the post. The respondent has all the right to terminate the services of the petitioner. However, the learned counsel for the respondent is unable to controvert the other contentions raised by petitioner in this Special Civil Application. So, the respondent has not been able to controvert, interalia, the fact that the petitioner is a 'workman' and the respondent is an 'industry' and the services of the petitioner were terminated without following the provisions of Section 25-F of the Industrial Disputes Act, 1947, though the petitioner has completed more than 240 days' service in 12 calendar months preceding the date of termination of his services. The Division Bench of this Court, in Special Civil Application No.4087 of 1984 and cognate matters, which were the matters of termination of services of daily wagers of respondent-municipality, though earlier in point of time than the termination of services of the petitioner, held that termination of services of daily wagers who have completed more than 240 days' service in twelve calendar months preceding the date of termination, in violation of Section 25-F of the Industrial Disputes Act, 1947, is illegal. Only on this ground, the petitions were allowed and the orders of termination of services of those persons were declared to be illegal and the same were quashed and set aside and an order was passed to reinstate the petitioners therein with full backwages. In the present case also, the termination of services of the petitioner has been made in violation of provisions of Section 25-F of the

Industrial Disputes Act, 1947. The learned counsel for the respondent contended that even if it is taken that the respondent-municipality has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947, while terminating the services of the petitioner, then too, this writ petition is not maintainable as the petitioner has an alternative remedy of raising industrial dispute. This petition has not only been admitted twelve years back, but by passing a mandatory injunction the respondent was directed to reinstate the petitioner back in service. At the initial stage of this Special Civil Application, the same could have been dismissed on the ground of availability of alternative remedy, particularly when the petitioner has come up with the case of violation of some provisions of the Industrial Disputes Act, 1947, in terminating his services by the respondent, but at this stage, more so when this Court has considered it to be a case where the petitioner was ordered to be reinstated back in service by mandatory injunction, on this ground, I do not consider it to appropriate to dismiss this petition. The petitioner continued in service by respondent and only thing now is to pass the order of setting aside the termination order. Stay has been granted in favour of petitioner by this Court on 10th March 1987. So there is only question of backwages from 1st May 1986 till the date the petitioner has been reinstated in services in pursuance of the order of this Court dated 10th March 1987. This matter is squarely covered by decision of Division Bench of this Court on which reliance has been placed by petitioner in this Special Civil Application.

#. In the result, this Special Civil Application succeeds and the same is allowed and the order, annexure 'A' to this Special Civil Application is quashed and set aside. However, taking into consideration the totality of the facts of the case and particularly the fact that this Court has protected the petitioner by grant of mandatory interim relief, I do not consider it to be a fit case where the petitioner should be given backwages for the period from 1.5.86 to 10.3.87. However, the petitioner shall be entitled for backwages for a period from 11th March 1987, till the date on which he was reinstated back in service in pursuance of the order of this court dated 10th March 1987. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)